

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
ROGER R. CRANE, JR.,	:	
Plaintiff,	:	07 CV 7063 (BSJ)
	:	
-against-	:	
	:	
POETIC PRODUCTS LIMITED,	:	
	:	
Defendant.	:	
	:	
-----X		

**AFFIDAVIT OF ADAM PAUL BRICKELL**

**EXHIBIT APB 1**

Plaintiff  
A. P. Brickell  
Affidavit: First  
Exhibits: "APB 1" - "APB 3"  
Date: 20 August 2007

Claim No: 07 CIV 7063

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BETWEEN:

ROGER R. CRANE, JR

Claimant

- and -

POETIC PRODUCTS LIMITED

Defendant

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EXHIBIT "APB 1" REFERRED  
TO IN THE AFFIDAVIT OF  
ADAM PAUL BRICKELL

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Exhibit "APB 1" contains the following documents:

1. Complaint to the Court of the Southern District of New York dated 8 August 2007;
2. Summons addressed to the Defendant dated 8 August 2007;
3. Individual Practices of Judge Jones dated 20 January 2005;
4. 3rd Amended Instructions for Filing an Electronic Case or Appeal dated 7 June 2004; and
5. Individual Practices of Magistrate Judge Maas.

SWORN by Adam Paul Brickell )

This 20th day of August 2007 )

Before me: Jessica Stretch )

A Solicitor/Commissioner for Oaths )

at Osborne Clarke )  
One London Wall  
EC2Y 5EB

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE JONES

ROGER R. CRANE, JR.,

Plaintiff,

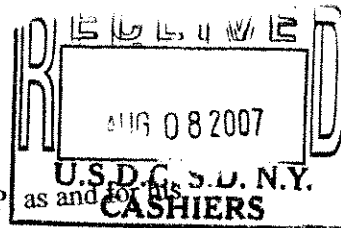
COMPLAINT

- VS -

POETIC PRODUCTS LIMITED,

Defendant.

07 CIV 7063



Plaintiff, Roger R. Crane, Jr., by his attorneys, Nixon Peabody LLP

Complaint against Poetic Products Limited, alleges as follows:

### NATURE OF THIS ACTION

1. *The Last Confession*, a play authored by New York attorney Roger R. Crane, Jr. ("Crane"), is currently celebrating success in London, England, where it opened this year to rave reviews from critics and theatre-goers alike. The play is a historical mystery thriller surrounding the death of Pope John Paul I. The Pope's untimely death is renowned, and was of acute public interest in the late 1970's and early 1980's. In 1978, thirty-three days after his election, Pope John Paul I was dead. No official investigation was conducted, no autopsy was performed, and the Vatican's press release about the cause of death was found to be largely false. Mr. Crane's play is a gripping thriller that goes behind the scenes at the 1978 Vatican, uncovering the bitter rivalries, the political maneuverings and the unspoken crises of faith that surrounded the death of Pope John Paul I.

2. Defendant Poetic Products Limited ("PPL") is the copyright holder to a book authored by David Yallop entitled *"In God's Name: An Investigation Into The Murder of Pope*

*John Paul I* ("In God's Name"). *In God's Name* is a self-proclaimed "classic work of investigative writing" about the death of Pope John Paul I. According to its preface, *In God's Name* was a product of nearly three years of research, and states that the reader should be assured that "all the information, all the details, all the facts, have been checked and double checked to the extent multiple sources were available."

3. While both *In God's Name* and *The Last Confession* focus on the mysterious death of Pope John Paul I, and, as such, share some common facts and some common conclusions, Yallop's book bears little resemblance to Crane's play. Nonetheless, PPL, through its counsel, claims that *The Last Confession* infringes *In God's Name*, threatens to sue Crane for copyright infringement, and has through correspondence, placed a cloud on the ownership rights of Crane in *The Last Confession*.

4. Apart from elements common to historical and religious facts and beliefs surrounding Pope John Paul I's death, *The Last Confession* is not substantially similar to *In God's Name*. There is no basis for PPL's claims of infringement, and Crane has filed this declaratory judgment action in order to resolve this dispute and obtain a declaration that *The Last Confession* does not infringe PPL's copyright or any other interests in *In God's Name*.

#### PARTIES

5. Plaintiff Crane is an attorney who resides and practices law in New York, and is the author and exclusive copyright owner of *The Last Confession*. A certificate of registration for Crane's *The Last Confession*, Registration No. TX-4-640-311, is annexed hereto as Exhibit

A. Crane holds another copyright registration for a shorter, revised version of *The Last Confession*, Registration No. PAu-2-801-288. The U.S. Copyright Office Record for this registration is annexed hereto as Exhibit B.

6. Upon information and belief, defendant PPL is a private company with a principal place of business at 58-60 Berners Street, London, England.

7. Upon information and belief, PPL is the copyright holder of the book *In God's Name*, authored by David Yallop.

8. PPL registered *In God's Name* with the United States Copyright Office, Registration Number TX-1-499-279.

9. *In God's Name* is published by Carroll & Graf Publishers, an imprint of Avalon Publishing Group, Inc., located at 245 West 17th Street, 11th Floor, New York, NY 10011, and is for sale in bookstores in New York City, and can also be purchased in New York and elsewhere via the internet.

#### **JURISDICTION AND VENUE**

10. Crane seeks a declaration of his rights pursuant to 28 U.S.C. §§ 2201(a) and 2202, in order to resolve an actual controversy within this Court's jurisdiction between the parties. Subject matter jurisdiction exists pursuant to 28 U.S.C. §§ 1331, 1332(a)(2) and 1338(a).

11. This Court has personal jurisdiction over PPL pursuant to N.Y. CPLR 302(a)(1) because, among other things, PPL, through its agent publisher located in New York City, is offering *In God's Name* for sale within the state of New York.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

#### **THE CONTROVERSY BETWEEN THE PARTIES**

13. On multiple occasions in June and July, 2007, PPL sent correspondence to Crane asserting that *The Last Confession* infringes PPL's copyright in *In God's Name*, and has communicated expressly to the publisher, director and producers of Crane's play that the play constitutes infringement and has threatened to seek and accounting and damages based on any

likely profits from future productions of *The Last Confession* or revenues received from film rights.

14. Crane responded to the letters, stating that Crane's *The Last Confession* does not infringe *In God's Name*.

**FIRST CAUSE OF ACTION  
(DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. § 2201(a))**

15. The allegations of Paragraphs 1 through 14 are realleged as if fully set forth herein.

16. The dispute created by PPL's claims of copyright infringement is an actual, substantial and justiciable controversy between the parties requiring resolution by the Court.

17. PPL contends that Crane copied *In God's Name*, and that Crane's *The Last Confession* infringes PPL's copyright for the same, and has expressly stated its claims for damages, an account of profits in respect to infringements of its copyright, and a right to seek preliminary injunctive or other relief.

18. Crane contends that the two works are not substantially similar, that any similarities are between the works are similarities between unprotectable elements of the works, and further contends that any use made by Crane of *In God's Name* was a fair use pursuant to 17 U.S.C. § 107.

19. Crane has no adequate remedy at law.

**WHEREFORE**, Crane demands the following judgment:

1. A declaration that Crane's authorship, publication and exploitation of rights in and to *The Last Confession* has not in any way infringed the copyright of PPL or any person or entity owning rights to *In God's Name* or any prior edition or version of the work, or otherwise violated any rights of PPL.

2. An award of attorneys fees in connection with this action.
3. For such other relief as the Court deems just.

Dated: August 8, 2007

NIXON PEABODY LLP

By: Frank H. Penski

Frank H. Penski (FP 9221)  
Tamar Y. Duvdevani (TD 7603)  
437 Madison Avenue  
New York, New York 10023  
(212) 940-3000

*Attorneys for Plaintiff*  
*Roger R. Crane, Jr.*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROGER R. CRANE, JR.,

Plaintiff,

- VS -

POETIC PRODUCTS LIMITED,

Defendant.

Civil No. 07 CV 7063 (BSJ)

**COMPLAINT  
EXHIBIT A**





This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters  
REGISTER OF COPYRIGHTS  
United States of America

**FORM TX**  
UNITED STATES COPYRIGHT OFFICE

REGISTRATION 2-15-68

TX 4-640-311



EFFECTIVE DATE OF REGISTRATION

Oct. 1 1997

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

**TITLE OF THIS WORK ▼**

John Paul The Last Confession of Cardinal Giovanni Benilli

**PREVIOUS OR ALTERNATIVE TITLES V**

**PUBLICATION AS A CONTRIBUTION** If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼	Number ▼	Issue Date ▼	On Pages ▼

NAME OF AUTHOR V

2 Roger R. Crane, Jr.

**DATES OF BIRTH AND DEATH**  
 Year Born ▼ Year Died ▼  
 03/28/46

Was this contribution to the work a

**AUTHOR'S NATIONALITY OR DOMICILE**

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP**

Briefly describe nature of the material created by this author in which copyright is claimed. ▼

Text

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH	
Year Born ▼	Year Died ▼
1900	1950

Was this contribution to the work a

**AUTHOR'S NATIONALITY OR DOMICILE**

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

Anonymous? ☐ Yes ☐ No

Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

### NATURE OF AUTHORSHIP

Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH	
Year Born ▼	Year Died ▼
1900	1950
1901	1951
1902	1952
1903	1953
1904	1954
1905	1955
1906	1956
1907	1957
1908	1958
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2041	2091
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2044	2094
2045	2095
2046	2096
2047	2097
2048	2098
2049	

Was this contribution to the work a

**AUTHOR'S NATIONALITY OR DOMICILE**

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

Anonymous? ☐ Yes ☐ No

Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

### NATURE OF AUTHORSHIP

Briefly describe nature of the material created by this author in which copyright is claimed. ▼

**YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED**      This information must be given in all cases.

1997      4 Year

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK  
Complete this information ONLY if this work has been published. Month ▶ 8 Day ▶ 5 Year ▶ 1997

**COPYRIGHT CLAIMANT(S)** Name and address must be given even if the claimant is the same as the author given in space 2.▼

Roger R. Crane, Jr.  
c/o Bachner, Tally, Polevoy & Misher LLP  
380 Madison Avenue  
New York, NY 10017-2590

New York, NY 10017-2590  
TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ✓

DATE HERE  
SEE ONLY

APPLICATION RECEIVED  
OCT 01 1997  
ONE DEPOSIT RECEIVED  
OCT 01 1997\*  
TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

**MORE ON BACK ▶** • Complete all applicable spaces (numbers 5-11) on the reverse side of this page.  
• See detailed instructions. • Sign the form at line 10.

DO NOT WRITE HERE

Page 1 of 2 pages

reiter granted under CFR 202.20 (d).

EXAMINED BY

MS

FORM TX

CHECKED BY

☐ CORRESPONDENCE  
Yes

☐ DEPOSIT ACCOUNT  
FUNDS USED

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

**PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

☐ This is the first published edition of a work previously registered in unpublished form.

☐ This is the first application submitted by this author as copyright claimant.

☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

**DERIVATIVE WORK OR COMPILATION** Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.

**6a. Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼

**6b. Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

**MANUFACTURERS AND LOCATIONS** If this is a published work consisting preponderantly of nondramatic literary material in English, the law may require that the copies be manufactured in the United States or Canada for full protection. If so, the names of the manufacturers who performed certain processes, and the places where these processes were performed must be given. See instructions for details.

Places of Manufacture ▼

Names of Manufacturers ▼

**REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED INDIVIDUALS** A signature on this form at space 10, and a check in one of the boxes here in space 8, constitutes a non-exclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work; or (3) both.

☐ Copies and Phonorecords

☐ Copies Only

☐ Phonorecords Only

**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼

Roger R. Crane, Jr.

c/o Bachner, Tally, Polevoy & Misher LLP

380 Madison Avenue

New York, NY 10017-2590 Area Code & Telephone Number ▶ (212) 687-7000

**CERTIFICATION** I, the undersigned, hereby certify that I am the

Check one ▶

☒ author

☐ other copyright claimant

☐ owner of exclusive right(s)

☐ authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this is a published work, this date must be the same as or later than the date of publication given in space 3.

Roger R. Crane, Jr.

Date ▶

Have you:

- Completed all necessary spaces?
- Signed your application in space 10?
- Enclosed check or money order for \$35 payable to Register of Copyrights?
- Enclosed your deposit material with the application and fee?

MAIL TO: Register of Copyrights,  
Library of Congress, Washington,  
D.C. 20558.

MAIL  
CERTIFI-  
CATE TO

certificate  
will be  
mailed in  
indow  
velope

Name ▶ Roger R. Crane, Jr.  
c/o Bachner, Tally, Polevoy & Misher LLP

Number/Street/Apartment Number ▼

380 Madison Avenue

City/State/Zip ▼

New York, NY 10017-2590

17 U.S.C. § 506(e). Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

U.S. GOVERNMENT PRINTING OFFICE: 1988-481-560/20,015

February 1988-200,000



Copyright

## Search Records Results

Registered Works Database (Title Search)

**Search For:** LAST CONFESSION

1 Item

**For a list of commonly used abbreviations that appear in the catalog record, click here.**

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1. Registration Number: PAU-2-801-288

Title: The last confession.

Description: 116 p.

Note: A play.

Claimant: acRoger R. Crane , Jr., 1946-

Created: 1997

Registered: 7Oct03

Title on © Application: John Paul; The last confession of Cardinal Giovanni Benelli.

Previous Related Version: Prev. reg. 1997, TX 4-640-311.

Claim Limit: NEW MATTER: additions & revisions.

Special Codes: 3/D

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[Home](#) | [Contact Us](#) | [Legal Notices](#) | [Freedom of Information Act \(FOIA\)](#) | [Library of Congress](#)

U.S. Copyright Office  
101 Independence Ave. S.E.  
Washington, D.C. 20559-6000  
(202) 707-3000

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SUMMONS IN A CIVIL ACTION

ROGER R. CRANE, JR.,

Plaintiff

CASE NUMBER

-against-

**07 CIV 7063**

POETIC PRODUCTS LIMITED,

Defendant

JUDGE JONES

To:

Poetic Products Limited  
58-60 Berners Street  
London, England W1T 3JS

**YOU ARE HEREBY SUMMONED** and required to file with the Clerk of the Court and serve upon Plaintiff's attorney:

Frank H. Penski, Esq.  
NIXON PEABODY LLP  
437 Madison Avenue  
New York, New York 10022

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

**J. MICHAEL McMAHON**

CLERK

*Manos Quintero*

BY DEPUTY CLERK

**AUG 08 2007**

DATE



**INDIVIDUAL PRACTICES OF JUDGE BARBARA S. JONES**  
**[Effective January 20, 2005]**

Unless otherwise ordered by Judge Jones, matters before Judge Jones shall be conducted in accordance with the following practices:

**1. Communications With Chambers**

**A. Letters.** Except as otherwise provided below, communications with Chambers shall be by letter, with copies simultaneously delivered to all counsel. All letters must provide the name of the case and its docket number, and must state the name of the party that counsel represents. Copies of correspondence between counsel shall **not** be sent to Chambers.

**B. Telephone Calls.** Telephone calls to Chambers are permitted only in emergency situations requiring immediate attention. For instructions, call 212-805-6185.

**C. Faxes.** Faxes to Chambers are permitted only if copies are also simultaneously faxed or delivered to all counsel. **Do not follow with hard copy.** The fax number is 212-805-6191.

**D. Requests for Adjournments or Extensions of Time.** Applications for adjournments and extensions of time must be made in writing and received in Chambers by either mail or fax at least forty-eight hours prior to the scheduled appearance. All such applications must state (1) the original date, (2) the number of previous requests, (3) whether those previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. **Failure to comply with these requirements will result in a denial of the request absent good cause shown.** If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached.

**E. Courtesy Copies of Papers.** One (1) non-electronic courtesy copy of the complaint and the answer shall be provided to Chambers as soon as the originals are filed with the Clerk of Court in the Cashier's Office (Room 120). Originals and copies should bear legends distinguishing between them.

**2. Motions**

**A. Generally.** Pre-motion conferences are not required. For discovery motions, follow Local Civil Rule 37.2.

**B. Courtesy Copies of Motion Papers.** Judge Jones accepts courtesy copies of motion papers only when the motion has been fully submitted, i.e., after the moving papers, any answering papers, and the moving party's reply papers have been filed. Counsel for the moving party shall deliver one (1) courtesy copy of all such motion papers from the various parties to Chambers. Any courtesy copies of papers submitted separately will be discarded by Chambers. Parties are reminded that each party must file its respective papers with the Clerk of the Court as such papers are served.

**C. Oral Argument on Motions.** The Court will advise counsel if argument will be heard and, if so, of the argument date.

**3. Pretrial Procedures**

**A. Joint Pretrial Orders in Civil Cases.** Unless otherwise ordered, within 30 days after the date for the completion of discovery in a civil case, the parties shall submit to the Court for its approval a joint pretrial order, which shall include the following:

- i. The full caption of the action.
- ii. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.
- iii. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied upon and relevant facts as to citizenship and jurisdictional amount.
- iv. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted that are not to be tried.
- v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.



vi. A statement as to whether or not all parties have consented to trial of the case by a Magistrate Judge (without identifying which parties have or have not so consented).

vii. Any stipulations or agreed statements of fact or law that have been agreed to by all parties.

viii. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition.

ix. A designation by each party of deposition testimony to be offered in its case-in-chief, with any cross-designations and objections by any other party.

x. A list by each party of exhibits to be offered in its case-in-chief, with a star indicating exhibits to which any party objects on any ground.

**B. Filings Prior to Trial in Civil Cases.** Unless otherwise ordered, each party shall file, 15 days before the date of commencement of trial, if such a date has been fixed, or 30 days after the filing of the final pretrial order if no trial date has been fixed:

i. In jury cases, requests to charge and proposed voir dire questions. When feasible, proposed jury charges should also be submitted on a 3.5" diskette in Microsoft Word;

ii. In non-jury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element;

iii. In all cases, motions addressing any evidentiary or other issues that should be resolved in limine, with opposition papers filed within 7 days of those motions; and

iv. In any case where such party believes it would be useful, a pretrial memorandum.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x		
	:	CONSENT TO PROCEED BEFORE
Plaintiff(s),	:	UNITED STATES MAGISTRATE JUDGE
	:	
- against -	:	_____ Civ. _____ ( ) ( )
	:	
Defendant(s).	:	
----- x		

IT IS HEREBY STIPULATED by the undersigned:

1. All parties consent, pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, that a United States Magistrate Judge conduct all further proceedings in this action, including any trial and entry of final judgment.

2. Any appeal from a judgment entered in this case will lie to the Court of Appeals for the Second Circuit as from any other judgment of the district court pursuant to 28 U.S.C. § 636(c)(3) and Fed. R. Civ. P. 73(c).

\_\_\_\_\_  
Attorney(s) for Plaintiff(s)  
Address  
Telephone

\_\_\_\_\_  
Attorney(s) for Defendant(s)  
Address  
Telephone

\_\_\_\_\_  
Attorney(s) for \_\_\_\_\_  
Address  
Telephone

\_\_\_\_\_  
Attorney(s) for \_\_\_\_\_  
Address  
Telephone

(Separately executed forms may be submitted. See Fed. R. Civ. P. 73(b).)

SO ORDERED.

\_\_\_\_\_  
U.S.D.J.

Magistrate Judge \_\_\_\_\_ was assigned this case on \_\_\_\_\_.

\_\_\_\_\_  
For: Clerk U.S.D.C. S.D.N.Y.

A copy of this Notice must be served by the plaintiff with the complaint on all adversary parties, and attached to any third-party complaint served by a defendant.

### **RIGHT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and S.D.N.Y. Local Civil Rule 73.1, the United States Magistrate Judges of the Southern District of New York have jurisdiction, with the consent of all parties, to conduct any or all proceedings in a civil case, including jury or non-jury trials, and order the entry of judgment. Trial before a Magistrate Judge proceeds in the same manner as trial before a District Judge.

The Magistrate Judge previously designated for the case will conduct the consent proceedings. If no Magistrate Judge has been designated, one will be drawn by lot to preside.

In accordance with 28 U.S.C. § 636(c)(3) and Fed. R. Civ. P. 73(c), appeal in a consent proceeding lies to the United States Court of Appeals for the Second Circuit as it would from any judgment of the district court.

The decision to consent, or not to consent, to proceed before a Magistrate Judge under § 636(c) is entirely voluntary. Only if all parties to the case consent to the reference will either the District Judge or Magistrate Judge be informed of the decision. Fed. R. Civ. P. 73(b).

If the parties in this action consent to proceed before a Magistrate Judge, the attached consent form should be signed by counsel for all parties and submitted to the Judgment and Orders Clerk in Room 120 of the Courthouse at 500 Pearl Street or Room 167 of the White Plains Courthouse. Separately executed forms may be submitted. See Fed.R. Civ. P. 73(b).

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\*\*\*\*\*

## **CRITICAL INSTRUCTIONS TO ATTORNEYS:**

\*\*\*\*\*  
\*\*\*\*\*

**\*\*\*\*\* Please Read Immediately \*\*\*\*\***

You must read and comply with all of the instructions on the attached sheet.  
Your case **CANNOT** be opened until you have correctly followed ALL of  
the required steps.

J. MICHAEL McMAHON  
CLERK OF COURT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
500 PEARL STREET, NEW YORK, NY 10007  
300 QUARROPAS STREET, WHITE PLAINS, NY 10601

WWW.NYS.USCOURTS.GOV

June 7, 2004

### 3rd Amended Instructions for Filing an Electronic Case or Appeal

**Important** - your new case is an electronically filed case (ECF case) and you will be required to file documents electronically instead of on paper (with certain exceptions listed below). If you don't have your ECF password yet, you should register now (no fee required) on the CM/ECF page of the Court's website at [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov). Please follow the instructions below.

**ECF Judges:**

Baer ***	Castel **	Griesa **	Knapp ***	McMahon *	Preska *	Stein *
Batts *	Cedarbaum***	Haight **	Koeltl *	Motley ***	Rakoff **	Swain **
Berman **	Chin **	Hellerstein **	Kram ***	Mukasey *	Robinson *	Sweet *
Briant *	Conner *	Holwell **	Leisure **	Owen ***	Sand ***	Wood **
Buchwald **	Cote **	Jones **	Lynch **	Patterson ***	Scheindlin **	Magistrate- Judges *
Carter ***	Daniels **	Kaplan *	Marrero **	Pauley **	Sprizzo ***	
Casey **	Duffy ***	Keenan **	McKenna ***	Pollack **	Stanton ***	

\* ECF Wave 1 Judge, assigning new cases filed on or after December 2, 2003 to the ECF system.

\*\* ECF Wave 2 Judge, assigning new cases filed on or after March 1, 2004 to the ECF system.

\*\*\* ECF Wave 3 Judge, assigning new cases filed on or after June 7, 2004 to the ECF system.

**Important note on non-ECF cases:** Older cases filed prior to the above dates, as well as Pro Se cases, Habeas Corpus cases, Social Security cases, and Multi-District Litigation will not be electronically filed and should be filed on paper. Do not file documents electronically in cases that are not assigned to the ECF system.

### Instructions

(1) Electronic cases are opened and service of the initiating documents (complaint, notice of removal, etc.) is accomplished in the traditional manner, on paper.

(2) **Important** - In addition to serving the initiating documents in the traditional manner, on paper, you are also required to deliver paper copies of the following documents to all other parties (copies available at the courthouse, & on our website):

- (a) The assigned Judge's Individual Rules
- (b) USDC/SDNY Instructions for Filing an Electronic Case or Appeal (this document)
- (c) USDC/SDNY Procedures for Electronic Case Filing
- (d) USDC/SDNY Guidelines for Electronic Case Filing.

(3) Within 24 hours of the assignment of a case number, you are required to email to the Clerk of Court the initiating documents in Adobe Acrobat pdf format only. Failure to do so within 24 hours will delay adding your case to the computerized ECF docket. Include a F.R.C.P. Rule 7.1 Statement (if applicable) and any exhibits. The case number, the Judge's initials, and "ECF CASE" must appear in the document's case caption. Each document must be in a separate pdf file no larger than 2.5 megabytes (separate large computer files into smaller parts if necessary, and label accordingly). When sending email, the subject line of the email & the file name of the pdf should list only the case number followed by a document description (ex. "Re: 01cv1234-complaint"). Send the email (do not file on the ECF system) to:

(a) For new civil cases assigned to a Manhattan Judge, email a pdf copy of the documents to

[case\\_openings@nysd.uscourts.gov](mailto:case_openings@nysd.uscourts.gov)

(b) For new civil cases assigned to a White Plains Judge, email a pdf copy of the documents to

[wpclerk@nysd.uscourts.gov](mailto:wpclerk@nysd.uscourts.gov)

Page 1 of 2

## USDC/SDNY Instructions for Filing an Electronic Case or Appeal

Page 2 of 2

- (4) File the Affidavit of Service for the initiating document (complaint, notice of removal, etc.) in the following manner:
- (a) electronically file the Affidavit of Service for the initiating document on the ECF system (do not send by email),
  - (b) file the original Affidavit of Service with summons attached in the traditional manner, on paper with the Clerk.
- (5) All subsequent documents, including the Defendant's Answer, must be filed electronically on the ECF system at [ecf.nysd.uscourts.gov](http://ecf.nysd.uscourts.gov). Electronic filing involves using your ECF password to docket the item directly into the ECF system. Electronic filing is not the same as email to the Clerk. Read the Judge's Individual Rules to determine if courtesy copies (on paper) are required.
- (6) Appeals will be assigned to the ECF system only if the original case was also electronically filed. File the appeal in the traditional manner, on paper. Then within 24 hours of filing the paper copy of your Appeal at the courthouse, you are required to email to the Clerk of Court an electronic copy of the Appeal in pdf format. Include any exhibits. Each document must be in a separate pdf file no larger than 2.5 megabytes. The District Court case number, the Judge's initials, and "ECF CASE" must appear in the document's case caption.

When sending email, the subject line of the email should always list the case number followed by a document description (ex. "Re: 01cv1234-appeal"). Send the email (do not file on the ECF system) to:

- (a) For appeals from an ECF case assigned to a Manhattan Judge, email a pdf copy of the appeal to

[appeals@nysd.uscourts.gov](mailto:appeals@nysd.uscourts.gov)

- (b) For appeals from an ECF case assigned to a White Plains Judge, email a pdf copy of the appeal to

[wpclerk@nysd.uscourts.gov](mailto:wpclerk@nysd.uscourts.gov)

- (7) Follow all the rules for Electronic Case Filing (available at [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov)):

- (a) SDNY Procedures for Electronic Case Filing
- (b) SDNY Guidelines for Electronic Case Filing
- (c) Individual Rules of the Assigned Judge
- (d) Local Rules of this Court, and
- (e) Federal Rules of Civil Procedure

✓ Learn More About Electronic Case Filing at [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov)

- ✓ Click on the "CM-ECF" page for the official ECF filing rules, training information, computer requirements, and more.
- ✓ Attorneys should use the "Attorney Registration" page to register on-line for a SDNY ECF password (no fee). Your ECF password will be sent to you by email. You must have an ECF password from SDNY District Court to file documents electronically.
- ✓ Sign up now for a SDNY PACER account if you don't already have one. Call (800) 676-6856, or go to <http://pacer.psc.uscourts.gov>
- ✓ Electronically file documents in ECF cases over the Internet at [ecf.nysd.uscourts.gov](http://ecf.nysd.uscourts.gov)
- ✓ Don't have a computer or scanner? Bring your ECF password and the paper documents to the courthouse, and you can use our public computers to electronically file your documents. Call the ECF Help Desk for more information.
- ✓ The ECF Help Desk is available to answer your ECF questions from 8:30 AM to 7:30 PM at (212) 805-0800, and from 8:30 AM to 5:00 PM at (914) 390-4204, and by email at [help\\_desk@nysd.uscourts.gov](mailto:help_desk@nysd.uscourts.gov)

[WWW.NYSD.USCOURTS.GOV](http://WWW.NYSD.USCOURTS.GOV)



J. MICHAEL McMAHON  
WWW.NYS.USCOURTS.GOV

CLERK OF COURT

## UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK  
500 PEARL STREET, NEW YORK, NY 10007

December 1, 2003

# Guidelines for Electronic Case Filing

The following guidelines apply to all electronically filed cases and have been written by the Clerk of Court under the authority of this Court's Procedures for Electronic Case Filing.

### Q. What is the web address for the SDNY ECF system?

The new ECF system will be on the Internet at <https://ecf.nysd.uscourts.gov>

### Q. Should I use Netscape Navigator or Internet Explorer to use ECF?

Only Netscape Navigator 4.6, 4.7, or Internet Explorer 5.5 have been certified for use with the ECF program. Other browsers have not been certified, and while they may work part of the time, they may also cause errors in the middle of filing.

### Q. Is there a limit to the size of a document that can be filed on ECF?

Yes, 2.5 megabytes (approximately 50 pages). If your file is too large, the system will reject it. The solution is to separate an oversized file into 2 or more parts and docket it in a single event. Simply label each file 1, 2, 3, etc. In all cases assigned to the ECF system, no single document totaling more than 15 megabytes (even if separated into individual computer files) shall be electronically filed without prior permission of the Court.

### Q. Can I file documents that originate on paper and are then scanned to create a pdf file?

Yes, but.....the ECF system will not accept any single document that is larger than 2.5 megabytes, or approximately 50 pages. Wherever possible, you should create pdf files directly from a word processing program. When you create a pdf file from a scanned paper document, the file size is significantly larger. This may prevent you from filing it as a single document on the ECF system and will also take up unnecessary computer memory on your own computer system. Besides, it's easier to create a pdf directly from a word processor.

### Q. Who can file documents on ECF?

Only an attorney admitted to practice in SDNY, and registered to use the ECF system, or an "authorized agent" of the filing user, is permitted to file (ECF Procedures, 8b). A filing will be deemed to be the sole responsibility of the filing user whose log-in and password were used to file the document. Be careful whom you allow to use your ECF log-in and password. Attorneys can register on-line to use ECF at [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov)

### Q. Can an attorney admitted Pro Hac Vice file documents electronically?

Yes. Immediately after a motion to be admitted pro hac vice is granted, the attorney is required to register to be an ECF Filing User at [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov)



SDNY Guidelines for Electronic Case Filing

**Q. Will I need a password to use ECF?**

Yes, 2 passwords - one for the ECF system and one for PACER. To obtain an ECF password you must first register to be an ECF Filing User at [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov). To obtain a PACER password go to <http://ecf.nysd.uscourts.gov>. If you already use dial up PACER service, then you don't need to change anything - your log-in and password will remain the same.

When a document is electronically filed, all ECF registered attorneys of record in that case will receive an email titled NOTICE OF ELECTRONIC FILING and a hypertext link to the document. That is your "one free look" at the document. If you need a second look or want to view other cases where you are not the attorney of record, you will be required to enter your PACER log-in and password.

**Q. Can I view both civil and criminal dockets over the Internet?**

Civil dockets are available remotely over the Internet to anyone with a PACER account. Criminal dockets are available remotely over the Internet only to the attorney of record. As always, all civil and criminal dockets may be viewed on public access computers at the courthouse.

**Q. How can I sign up other attorneys in my firm to receive electronic notices in my case?**

By adding them as an additional attorney of record. Every attorney of record will receive email notification of filings in his or her case. The ECF system will allow up to two attorneys of record to be entered in each case. Of course, each attorney must be a registered ECF filing user.

**Q. Must the caption of the document indicate it has been electronically filed?**

Yes. (SDNY ECF Procedures, 8a).

**Q. How will I know if I have successfully filed a document electronically?**

The filer will immediately receive a Notice of Electronic Filing, which should be saved and/or printed; it's your receipt. You will also see a list of who will be served electronically and who will not. It is the responsibility of the filing party to serve paper copies on any party that will not receive electronic notice.

**Q. What if I file the wrong document, or file in the wrong case?**

In all cases assigned to the ECF system, if a document is electronically filed in error, the filer shall immediately notify the Clerk of Court in writing, and the Clerk shall seek further guidance from the Court.

**Q. How do I sign an electronically filed document?**

The filing user's ECF log-in and password serve as his/her electronic signature. (ECF Procedures #8). The filing user should place an S/ in place of the signature. Signatures for all other persons must be scanned in order to capture the actual ink signature.

**Q. Will older cases be assigned to the ECF system?**

No. Only those cases filed after the ECF system goes live are subject to electronic filing. Cases filed before the ECF system goes live will not be converted to ECF cases. You will be able to view the docket sheets in older cases on-line, but not the documents.

**Q. Which cases will be ECF cases?**

Civil and criminal cases filed after December 1, 2003, will be subject to electronic filing. Social Security cases, Habeas Corpus cases and Pro Se cases will not be assigned to the ECF system.

**Q. Which Judges will entertain ECF cases?**

Eventually all the courts Judges and Magistrate-Judges will be able to entertain ECF cases. Groups of judges will be added to the ECF system over a 12 month period. The first group will include Judges Batts, Briant, Conner, Kaplan, Koeltl, McMahon, Mukasey, Preska, Robinson, Stein, Sweet, and all the Court's Magistrate Judges. Parties are directed to refer to each judge's individual rules (available on the court's website) to learn whether a particular case will be assigned to the ECF system.

**Q. How do I view a document in an ECF case?**

Use an approved Internet web browser (see above) and go to <https://ecf.nysd.uscourts.gov>. Click on Query, enter the case number, find the document, and click on the blue hyperlink next to that entry. An electronic copy of the complete document will then appear on your computer screen. If there is no blue hyperlink, then there is no electronic version of that document.

**Q. Does filing electronically affect the filing deadline?**

No. Filing electronically does not change your obligation to comply with the Federal Rules and any applicable Local Rules. Filing must be completed before midnight local time in order to be considered timely filed that day (ECF Procedures 3c)(See also Judges Individual Rules).

**Q. How do I open an ECF case?**

To open a civil action, you must file the complaint on paper at the courthouse, pay any applicable fee, and serve the documents in the traditional manner, on paper. (See SDNY ECF Procedures 1d). Then you must email (not electronically file) a pdf copy of all filed documents to the Clerk of Court within 24 hours. All documents must be marked with the case number and assigned Judge's name. Email a copy of all filed documents in pdf format to:

SDNY Guidelines for Electronic Case Filing

For cases assigned to a Manhattan Judge: [case\\_openings@nysd.uscourts.gov](mailto:case_openings@nysd.uscourts.gov)

For cases assigned to a White Plains Judge: [wpclerk@nysd.uscourts.gov](mailto:wpclerk@nysd.uscourts.gov)

Failure to email the pdf copy of the complaint to the Clerk within 24 hours may result in a delay in adding the case to the Court's electronic docket.

**Q. Must I serve a copy of the assigned Judge's Individual Rules with the complaint?**

Yes. Copies of Judges' Individual Rules are available at the Clerk's Office and also on the Court's public website at [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov)

**Q. Must I file a paper Summons and Affidavit of Service for the Complaint?**

Yes. For ECF cases, the Affidavit of Service with the original summons attached must be filed with the court in the traditional manner, on paper (ECF Procedures, 1d).

**Q. Must I file a paper Affidavit of Service for other documents in the case?**

No. For all other electronically filed documents after the complaint, the Clerk will automatically transmit by email a Notice of Electronic Filing to each attorney of record that has registered to be an ECF Filing user. Transmission of that Notice of Electronic filing shall constitute service (ECF Procedures, 9).

**Q. How do I serve my adversary who has not registered to be an ECF Filing User?**

Upon completion of filing electronically, the filer will receive a receipt which should be printed and saved. The receipt will include a list of who will be served electronically and who will not. The ECF system does not relieve filers from their obligations under the Federal Rules of Civil and Criminal Procedure to serve paper copies on any party that will not receive electronic notice.

**Q. When filing a motion, should the supporting affidavit be attached or filed separately?**

Electronically filed motions should be filed in the traditional manner. Supporting affidavits and exhibits that would normally be filed attached to the motion should also be filed attached to an electronic motion. Other affidavits and memoranda of law that would normally be filed separately from the motion should be filed separately from an electronic motion. Exhibits attached to a motion must comply with the Court's Procedures for Electronic Case Filing, section 5. Excerpted material must be clearly marked as such.

**Q. How should I submit exhibits not attached to a motion?**

The Court's Procedures for Electronic Case Filing, section 5, requires that attachments and exhibits must be submitted in electronic form, unless the Court permits paper filing. Only relevant excerpts of exhibits, labeled as such, should be submitted. Remember, there are limits to the size of a computer file that may be submitted (see page 1). A party may move for permission to serve and file in hard copy documents that cannot reasonably be scanned.

SDNY Guidelines for Electronic Case Filing

**Q. How do I file a proposed order, judgment or stipulation?**

Proposed orders, judgments and stipulations should not be submitted through the ECF system. Instead they should be sent by email to the Clerk. Proposed orders should be submitted in word processing format (WordPerfect or Word) rather than as a pdf document. Stipulations should be submitted in pdf format. Stipulations must contain all required signatures (the last person to sign can email it to the clerk). Email the proposed order, judgment or stipulation to:

For cases assigned to a Manhattan Judge: [orders\\_and\\_judgments@nysd.uscourts.gov](mailto:orders_and_judgments@nysd.uscourts.gov)

For cases assigned to a White Plains Judge: [wpclerk@nysd.uscourts.gov](mailto:wpclerk@nysd.uscourts.gov)

**Q. How do I file an Order to Show Cause?**

In all cases assigned to the ECF system, Orders to Show Cause seeking a stay shall be submitted in the traditional manner, in person before the Court.

Orders to Show Cause that do not seek a stay, shall be submitted by email (not filed on the ECF system) to the Clerk in word processing format (WordPerfect or Word) rather than as a pdf document. Email the proposed Order to Show Cause to:

For cases assigned to a Manhattan Judge: [orders\\_and\\_judgments@nysd.uscourts.gov](mailto:orders_and_judgments@nysd.uscourts.gov)

For cases assigned to a White Plains Judge: [wpclerk@nysd.uscourts.gov](mailto:wpclerk@nysd.uscourts.gov)

**Q. How do I file a default judgment?**

Default judgments should not be submitted through the ECF system. Instead they should be sent by email to the Clerk, in word processing format (WordPerfect or Word) rather than as a pdf document. Email the default judgment documents to:

For cases assigned to a Manhattan Judge: [orders\\_and\\_judgments@nysd.uscourts.gov](mailto:orders_and_judgments@nysd.uscourts.gov)

For cases assigned to a White Plains Judge: [wpclerk@nysd.uscourts.gov](mailto:wpclerk@nysd.uscourts.gov)

**Q. How do I submit a letter?**

In the traditional manner on paper. Do not submit letters through the ECF system. (See also each Judge's Individual Rules).

**Q. Will sealed documents be filed electronically?**

No. Sealed documents will be filed in the traditional manner, in paper form.

**Q. How do I file a Notice of Appeal?**

To file a Notice of Appeal you must file the Notice on paper at the courthouse, including a copy of the document being appealed, and pay any applicable fee. (See SDNY ECF Procedures, 1d). Then you must email (not electronically file) a pdf copy of all filed documents to the Clerk of Court within 24 hours. All documents must be marked with the District Court case number and assigned Judge's name. Email a copy of all filed documents in pdf format to:

For cases assigned to a Manhattan Judge: [appeals@nysd.uscourts.gov](mailto:appeals@nysd.uscourts.gov)

For cases assigned to a White Plains Judge: [wpclerk@nysd.uscourts.gov](mailto:wpclerk@nysd.uscourts.gov)

Failure to email the pdf copy of the Notice of Appeal to the Clerk within 24 hours may result in a delay in adding the appeal to the Court's electronic docket.

**Q. Which is the "original" document, the paper or the ECF version?**

When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Court, and the filing party is bound by the document as filed (ECF Procedures 3b).

**Q. Must I keep paper originals of documents I electronically file?**

Yes. See the official SDNY PROCEDURES FOR ELECTRONIC FILING, section 7 for details.

**Q. Should I continue to submit courtesy copies?**

Yes, continue your current practice. If you would submit a courtesy copy of the document in a non-ECF case, you should now submit a courtesy copy of it in an ECF case. (See also each Judge's Individual Rules).

**Q. When an attorney leaves a firm, how do we change the attorney's ECF Registration information?**

Send written notice to the Attorney Admissions Clerk, 500 Pearl Street, NY, NY 10007.

**Q. Will there be an ECF Help Desk?**

Yes. An ECF telephone Help Desk will be available from 8:30 AM to 7:30 PM Monday through Friday at (212) 805-0800, and from 8:30 AM to 5:00 PM at (914)390-4204. Or you can email your ECF questions to [help\\_desk@nysd.uscourts.gov](mailto:help_desk@nysd.uscourts.gov)

**Q. How can I stay up to date with future ECF news and developments?**

By registering to be a Point of Contact (POC) at [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov), you will receive periodic email messages concerning the ECF system. You don't need to be an attorney to be a POC



SDNY Guidelines for Electronic Case Filing

**Q. How can I learn how to use ECF?**

On the Court's website you will find "ECF 101", an on-line introduction to ECF, as well as detailed training materials for beginners and advanced users. Go to [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov)

United States District Court  
Southern District of New York

Procedures for Electronic Case Filing

March 6, 2003



## **Procedures for Electronic Case Filing**

### **Procedures for Electronic Case Filing**

The Court will accept for filing documents submitted, signed or verified by electronic means that comply with the following procedures.

#### **1. Scope of Electronic Filing**

(a) The Court will designate which cases will be assigned to the Electronic Filing System. Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the Court in a case assigned to the Electronic Filing System must be filed electronically. A paper may be filed electronically (i) from a remote location, (ii) by bringing it to the Clerk's office during regular business hours, in a form or electronic format prescribed by the Clerk, for input into the System, or (iii) where permitted by the Court, by bringing the paper to the Clerk's office during regular business hours to be scanned into the System.

(b) Unless limited by their terms to civil cases, the provisions of these procedures relating to electronic filing apply in criminal cases that are initiated by the filing of an indictment or information. Electronic filing procedures shall not apply to applications for arrest, search or electronic surveillance warrants; for other orders in aid of or ancillary to a criminal investigation; or to proceedings relating to the grand jury.

(c) Electronic filing procedures shall not apply to Social Security Cases.

(d) The filing and service of the initial papers in a civil case, including the complaint, the issuance of the summons and the proof of service of the summons and complaint, as well as service of non-party subpoenas, will be accomplished in the traditional manner on paper in accordance with the Federal Rules of Civil Procedure and applicable Local Rules governing service, rather than electronically. In a criminal case, the indictment or information, including any superseders, shall also be filed and given to the defendant in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules rather than electronically; in addition, service of subpoenas shall be made in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules. In a case assigned to the Electronic Filing System after it has been opened, parties must promptly provide the Clerk with electronic copies of all documents previously provided in paper form. All subsequent documents must be filed electronically except as provided in these procedures or as ordered by the Court.

#### **2. Eligibility, Registration, Passwords**

(a) Attorneys admitted to the bar of this Court, including those admitted pro hac vice and attorneys authorized to represent the United States, may register and may be required to register as Filing Users of the Court's Electronic Filing System. Unless excused by the Court, attorneys not already Filing Users appearing in cases assigned to the Electronic Filing System must register as Filing Users forthwith upon the case being so designated. Registration is in a form prescribed by the Clerk and requires the Filing User's name, address, telephone number, Internet e-mail address, and

Procedures for Electronic Case Filing  
Page 2

a declaration that the attorney is admitted to the bar of this Court or authorized to represent the United States.

(b) If the Court permits or requires, a party to a pending civil action who is not represented by an attorney may register as a Filing User in the Electronic Filing System solely for purposes of the action. Registration is in a form prescribed by the Clerk and requires identification of the action as well as the name, address, telephone number and Internet e-mail address of the party. If, during the course of the proceeding, the party retains an attorney who appears on the party's behalf, the attorney must advise the Clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

(c) Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

(d) In a civil action, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted, (i) each attorney identified on the Civil Cover Sheet, as well as (ii) each additional attorney who subsequently appears in the action and files a Request for Electronic Notification (which may be filed electronically). In a criminal case, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted and who will be granted access to electronically file and retrieve documents in the case, the attorney(s) for the United States identified on the Criminal Designation Form or subsequently identified as representing the United States in the case and each attorney filing a Notice of Appearance on behalf of a defendant. Notices of Appearance on behalf of a criminal defendant will be filed in the traditional manner on paper.

(e) An attorney of record may, by written or electronic request to the Clerk, have transmission of Notices of Electronic Filing to another attorney in his or her firm terminated.

### 3. Consequences of Electronic Filing

(a) Except as otherwise provided in Procedure 4 herein, electronic filing of a document in the Electronic Filing System consistent with these procedures, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules of this Court and constitutes entry of the document on the docket kept by the Clerk under Fed.R.Civ.P. 58 and 79 and Fed.R.Crim.P. 49 and 55.

(b) When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Court (subject to the exception set out in Procedure 4 below), and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under Procedure 1, a document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the Court.

**Procedures for Electronic Case Filing**  
**Page 3**

(c) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(d) Individual judges' practices should continue to be followed with respect to delivery of courtesy copies.

**4. Entry of Court Orders**

(a) All orders, decrees, judgments, and proceedings of the Court will be filed in accordance with these procedures and entered on the docket kept by the Clerk under Fed.R.Civ.P. 58 and 79 and Fed.R.Crim.P. 49 and 55. Each document signed by a judge shall be scanned so as to contain an image of the judge's signature and shall be filed electronically by the Court, and the manually signed original shall be filed by the Clerk of the Court. In the event of a discrepancy between the electronically filed copy and the manually signed original, the manually signed original shall control.

(b) A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such other form as the Court requires, if any.

**5. Attachments and Exhibits**

Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the Court permits paper filing. A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are relevant to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this procedure do so without prejudice to their right to file timely additional excerpts or the complete document. Responding parties may file timely additional excerpts that they believe are relevant or the complete document. A party may move for permission to serve and file in hard copy documents that cannot reasonably be scanned. In cases where the record of an administrative or other prior proceeding must be filed with the Court, such record may be served and filed in hard copy without prior motion and order of the Court.

**6. Sealed Documents**

Documents ordered to be placed under seal may not be filed electronically unless specifically authorized by the Court. A motion to file documents under seal should be filed electronically unless prohibited by law; however, a motion to file under seal that includes a statement of why the filing should not be made electronically may be made in paper copy. The order of the Court authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of the order must be attached to the documents under seal and be delivered to the Clerk.

**7. Retention Requirements**

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until one year after all time periods for appeals expire, except that affidavits, declarations and proofs of service must be maintained in

paper form by the Filing User until five years after all time periods for appeals expire. On request of the Court, the Filing User must provide original documents for review.

#### **8. Signatures**

(a) The user log-in and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Civil Procedure, including Rule 11, the Federal Rules of Criminal Procedure, the Local Rules of this Court, and any other purpose for which a signature is required in connection with proceedings before the Court. Each document filed electronically must indicate that it has been electronically filed. Electronically filed documents must include a signature block and must set forth the name, address, telephone number and (except in criminal cases) the attorney number, all in compliance with Local Civil Rule 11.1. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" typed in the space where the signature would otherwise appear.

(b) No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

(c) A document requiring the signature of a defendant in a criminal case may be electronically filed only in a scanned format that contains an image of the defendant's signature.

(d) Documents requiring signatures of more than one party must be electronically filed either by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (4) in any other manner approved by the Court.

#### **9. Service of Documents by Electronic Means**

Transmission of the Clerk's Notice of Electronic Filing of a document shall constitute service of such document upon any Filing User in that case. It remains the duty of the attorney for a party to review regularly the docket sheet of the case. Attorneys and pro se parties who are not Filing Users shall be served with a paper copy of any electronically filed pleading or other document. Service of such paper copy must be made according to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules.

#### **10. Notice of Court Orders and Judgments**

Immediately upon the entry of an order or judgment in a proceeding assigned to the Electronic Filing System, the Clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Crim.P. 49(c) and Fed.R.Civ.P. 77(d). It remains the duty of the attorney for a party to review regularly the docket sheet of the case. The Clerk must give notice in paper form to a person who is not a Filing User in accordance with the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure.

#### **11. Technical Failures**

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

#### **12. Public Access**

A person may review at the Clerk's office filings that have not been sealed by the Court. A person also may access the Electronic Filing System at the Court's Internet site [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov) by obtaining a PACER log-in and password. A person who has PACER access may retrieve docket sheets in civil and criminal cases and documents in a civil case, but only counsel for the government and for a defendant may retrieve documents in a criminal case. Only a Filing User under Procedure 2 herein may file documents.



**INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE MAAS**

Unless otherwise ordered, matters before Judge Maas shall be conducted in accordance with the following practices:

**1. Communications With Chambers.**

**A. Letters.** Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court.

**B. Telephone Calls.** In addition to Paragraph 1(D) below, telephone calls to chambers are permitted. For matters other than docketing, scheduling, or calendaring, call chambers at (212) 805-6727.

**C. Faxes.** Faxes to chambers are permitted only if copies are also simultaneously faxed or delivered to all counsel. No document longer than five (5) pages may be faxed without prior authorization. Do not follow with hard copy. The fax number is (212) 805-6724.

**D. Docketing, Scheduling, and Calendar Matters.** For docketing, scheduling, and calendar matters, call Richalyn Chambers at (212) 805-6734 between 10:00 A.M. and 4:00 P.M.

**E. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order (reflecting only business days) must be attached. If the request is for an adjournment of a court appearance, absent an emergency it shall be made at least 48 hours prior to the scheduled appearance.

**2. Motions.**

**A. Pre-Motion Conferences in Civil Cases.** For discovery motions, follow Local Civil Rule 37.2. For motions other than discovery motions, pre-motion conferences are not required.

**B. Courtesy Copies.** Courtesy copies of all motion papers, marked as such, should be submitted to chambers.

**C. Memoranda of Law.** Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to twenty-five (25) pages,

and reply memoranda are limited to ten (10) pages. Memoranda of ten (10) pages or more shall contain a table of contents.

**D. Filing of Motion Papers.** Motion papers shall be filed promptly after service.

**E. Oral Argument on Motions.** Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

### **3. Pretrial Procedures.**

**A. Joint Pretrial Orders in Civil Cases.** In cases assigned to a district judge, the pretrial order shall conform to that judge's individual rules. In cases assigned to Judge Maas on the consent of the parties, a pretrial order is not required unless specifically directed in a particular case. In the event a pretrial order is required by Judge Maas, the parties shall submit to the court a joint pretrial order which shall contain the following:

- i. The full caption of the action.
- ii. The names, addresses (including firm names) and telephone and fax numbers of trial counsel.
- iii. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount.
- iv. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.
- v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.
- vi. Any stipulations or agreed statements of fact or law which have been agreed to by all parties.
- vii. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition.
- viii. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.



ix. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

**B. Filings Prior to Trial in Civil Cases.** Unless otherwise ordered by the Court, each party shall file, 15 days before the date of commencement of any trial before Judge Maas:

- i. In jury cases, requests to charge and proposed voir dire questions. When feasible, proposed jury charges should also be submitted on a 3.5" diskette in WordPerfect version 5.1 or higher format;
- ii. In nonjury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element;
- iii. In all cases, motions addressing any evidentiary or other issues which should be resolved in limine; and
- iv. In any case where such party believes it would be useful, a pretrial memorandum.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____X	:	CONSENT TO PROCEED BEFORE
Plaintiff(s),	:	UNITED STATES MAGISTRATE JUDGE
- against -	:	_____ Civ. _____ ( ) ( )
Defendant(s).	:	_____X

IT IS HEREBY STIPULATED by the undersigned:

1. All parties consent, pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, that a United States Magistrate Judge conduct all further proceedings in this action, including any trial and entry of final judgment.

2. Any appeal from a judgment entered in this case will lie to the Court of Appeals for the Second Circuit as from any other judgment of the district court pursuant to 28 U.S.C. § 636(c)(3) and Fed. R. Civ. P. 73(c).

\_\_\_\_\_  
Attorney(s) for Plaintiff(s)  
Address  
Telephone

\_\_\_\_\_  
Attorney(s) for Defendant(s)  
Address  
Telephone

\_\_\_\_\_  
Attorney(s) for \_\_\_\_\_  
Address  
Telephone

\_\_\_\_\_  
Attorney(s) for \_\_\_\_\_  
Address  
Telephone

(Separately executed forms may be submitted. See Fed. R. Civ. P. 73(b).)

SO ORDERED.

\_\_\_\_\_  
U.S.D.J.

Magistrate Judge \_\_\_\_\_ was assigned this case on \_\_\_\_\_.

\_\_\_\_\_  
For: Clerk U.S.D.C. S.D.N.Y.



A copy of this Notice must be served by the plaintiff with the complaint on all adversary parties, and attached to any third-party complaint served by a defendant.

### **RIGHT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and S.D.N.Y. Local Civil Rule 73.1, the United States Magistrate Judges of the Southern District of New York have jurisdiction, with the consent of all parties, to conduct any or all proceedings in a civil case, including jury or non-jury trials, and order the entry of judgment. Trial before a Magistrate Judge proceeds in the same manner as trial before a District Judge.

The Magistrate Judge previously designated for the case will conduct the consent proceedings. If no Magistrate Judge has been designated, one will be drawn by lot to preside.

In accordance with 28 U.S.C. § 636(c)(3) and Fed. R. Civ. P. 73(c), appeal in a consent proceeding lies to the United States Court of Appeals for the Second Circuit as it would from any judgment of the district court.

The decision to consent, or not to consent, to proceed before a Magistrate Judge under § 636(c) is entirely voluntary. Only if all parties to the case consent to the reference will either the District Judge or Magistrate Judge be informed of the decision. Fed. R. Civ. P. 73(b).

If the parties in this action consent to proceed before a Magistrate Judge, the attached consent form should be signed by counsel for all parties and submitted to the Judgment and Orders Clerk in Room 120 of the Courthouse at 500 Pearl Street or Room 167 of the White Plains Courthouse. Separately executed forms may be submitted. See Fed.R. Civ. P. 73(b).

Plaintiff  
A. P. Brickell  
Affidavit: First  
Exhibits: "APB 1" - "APB 3"  
Date: 20 August 2007

**Claim No: 07 CIV 7063**

**IN THE UNITED STATES DISTRICT  
COURT**

**SOUTHERN DISTRICT OF NEW  
YORK**

BETWEEN:

**ROGER R. CRANE, JR**

Plaintiff

- and -

**POETIC PRODUCTS LIMITED**

Defendant

-----  
**EXHIBIT "APB 1" REFERRED  
TO IN THE AFFIDAVIT OF  
ADAM PAUL BRICKELL**  
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